In the Supreme Court of the United States

OCTOBER TERM, 1969

No. 1170

GUY PORTER GILLETTE, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

MEMORANDUM FOR THE UNITED STATES

After a jury trial in the United States District Court for the Southern District of New York, petitioner, a non-religious selective objector to the war in Vietnam, who was classified 1–A by his local selective service board, was convicted of having wilfully refused to report for induction as ordered, in violation of 50 U.S.C. App. 462. He was sentenced to two years' imprisonment. The court of appeals affirmed *per curiam* (Pet. App. A) on January 9, 1970. The petition for a writ of certiorari was not filed until February 11, 1970, and is out of time under Rule 22(2) of the Rules of this Court.

379-265—70

Petitioner contends that the statute (50 U.S.C. App. 456(j)) granting exemption only to those opposed to "participation in war in any form" is unconstitutional. An identical contention is before this Court in *United States* v. *Sisson,* No. 305, this Term. As pointed out in our brief in *Sisson,* even assuming *arguendo* the correctness of petitioner's constitutional arguments, he is at this stage (*i.e.* before receiving orders to go to Vietnam) without standing to assert his selective objector beliefs as a defense to his prosecution for failing to report for induction. However, assuming that this Court is disposed to overlook the untimeliness of the present petition, it may wish to defer disposition of the petition until after decision in *Sisson.*[1]

Respectfully submitted,

ERWIN N. GRISWOLD,
Solicitor General.

MARCH 1970.

[1] Petitioner also contends that the court erred in allegedly refusing to permit him to introduce proof bearing on his intent to commit the crime, by reading his letter explaining his reasons for not appearing for induction. The letter was already in evidence. It corroborated the evidence showing the "wilfulness" of his refusal to report. In any event, his motive for this action was irrelevant.

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